

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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June 24, 2002

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GSBCA 15728-RELO

In the Matter of EVAN E. ZILLMER

Evan E. Zillmer, Middleburg, FL, Claimant.

G. J. Murphy, Disbursing Officer, Personnel Support Activity, Department of the Navy, Jacksonville Naval Air Station, FL, appearing for Department of the Navy.

**WILLIAMS**, Board Judge.

Claimant, Evan E. Zillmer, seeks reimbursement of \$5815.33, representing the amount of closing costs he as seller paid to a buyer in conjunction with his permanent change of station. Because claimant has not demonstrated that the closing costs he paid are customarily paid by the seller in Calvert County, Maryland, we deny the claim.

Background

Effective January 16, 2001, claimant, Evan E. Zillmer, an aircraft engine mechanic, was transferred from Lusby, Maryland, to the Naval Aviation Depot in Jacksonville, Florida. On December 9, 2000, in conjunction with this permanent change of station, claimant signed a contract for the sale of his home. The property was located in Calvert County, Maryland. On December 14, he signed an addendum to this contract in which he agreed to pay a closing cost contribution of up to \$7000 on behalf of the buyers because the buyers did not qualify for a loan at the original price, his realtor advised him that it was customary for sellers to pay buyers' closing costs, his reporting date to his new duty station was imminent on January 18, 2001, and time constraints did not permit claimant to again attempt to sell his home on the open market. Specifically, claimant as seller paid the following closing costs totaling \$5822.50 for the buyers:

Loan Origination Fee	1,534.67
Loan Discount	1,176.90
Appraisal Fee	25.00
Credit Report	15.75
Commitment Fee	100.00
Processing Fee	65.00

Flood Certification	14.00
Hazard Insurance	89.01
Abstract Title Search	123.00
Attorney's Fees	295.00
Title Insurance	584.50
Recording Fees	50.00
City/County Stamps	785.00
State Tax Stamp	392.50
Survey	165.00
Pest Inspection	50.00
Home Inspection	200.00
Water Transfer Fee	150.00

Claimant also paid another \$7.17 which was "applied generically toward the buyer's remaining closing cost expenses."

In a memorandum from Metropolitan Mortgage Bankers, Inc. (MMB), the mortgage lender for this sale, the mortgage lender listed the closing costs which the seller paid, and at the bottom of the page the following note was typed in different type: "P.S. Please note that these expenses are customary for our area."

After reviewing the agency's submission in the claim, Mr. Zillmer determined that the postscript note needed further clarification. He explained: "I contacted Mr. Samuel Leach III with MMB requesting clarification of his note that states 'P.S. Please note that these expenses are customary for our area.'" The clarification substituted the following sentence on a copy of his original letter and deleted the original postscript note: "It is customary for the seller to pay the buyer's closing costs for our area." This note was also in different type.

### Discussion

The Federal Travel Regulation (FTR) provides that if a federal civilian employee is transferred from one official station to another and various conditions are met, various expenses involved in that employee's sale and/or purchase of a residence shall be reimbursed by the Government. One requirement which must be met in this regard is that the expense for which the employee seeks reimbursement must be customarily paid by the seller of a residence in the locality of the old official station or by the purchaser of a residence at the new official station. In addition, the amount sought must be within the limits of that which is, as a matter of fact, customarily paid. 41 CFR 302-6.2(d) (2000) (FTR 306-6.2(d)).

When questions of local custom arise, the burden is on the claimant to show why he or she should prevail. Larry W. Poole, GSBCA 15730-RELO, 02-1 BCA ¶ 31,776; Monika J. Dey, GSBCA 15662-RELO, 02-1 BCA ¶ 31,744; Sarah Blanding, GSBCA 14493-RELO, 98-2 BCA ¶ 29,790; Pierre S. Ware, GSBCA 14150-RELO, 97-2 BCA ¶ 29,061. To convince us that the agency's initial decision to deny these costs was incorrect, claimant must provide persuasive evidence that it is indeed customary in Calvert County, Maryland, for the seller to contribute to payment of the purchaser's closing costs. Byron D. Cagle, GSBCA 15218-RELO, 00-1 BCA ¶ 30,903.

In Donald V. McNamara, GSBCA 14428-RELO, 98-2 BCA ¶ 29,807, we examined a similar claim for closing costs paid in conjunction with the sale of a transferred employee's

home in Arlington, Virginia. In that case, we concluded that the claimant had failed to meet his burden of proof. The claim was supported with nothing more than two letters, one from the claimant's real estate sales associate and the other from the title company which conducted the closing. Both confirmed that in the area sellers were accustomed to contributing to purchasers' closing costs within certain percentage ranges. However, no specific data on sales was submitted and the agency's concern that this practice was driven by market conditions rather than custom remained unaddressed. Cf. Poole, 02-1 BCA at 156,917 (proof sufficient where claimant consulted with several real estate agents and an appraiser and submitted documentation from an agent setting forth a list of the type of fees which had customarily been paid by sellers for some forty years in the area). In Cagle, we recognized that simply because it is common for a seller to assume a buyer's closing costs by contract does not mean that the practice is customary. A common practice does not necessarily equate to established custom, but over time it can become so. Id.

In the instant case, as in McNamara and Cagle, claimant has not met his burden of proving that each of the expenses is customarily paid by the seller of a residence in the locality of his old official duty station. Here, the claimant's assertion is supported by only one general statement in a postscript note from the mortgage banker involved in the sale that "it is customary for the seller to pay the buyer's closing costs for our area." This generalized statement is less than persuasive, particularly in view of claimant's own statement indicating that he paid the closing costs not due to prevailing custom in the area, but rather to effect his sale, since the buyer did not qualify for a loan sufficiently large to allow him to purchase the home at the original price and he did not have time to put the house back on the market.

#### Decision

The claim is denied.

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MARY ELLEN COSTER WILLIAMS  
Board Judge